

511.8 Investment of funds.

A company organized under chapter 508 shall, at all times, have invested in the securities provided in this section, funds equivalent to its legal reserve. Legal reserve is the net present value of all outstanding policies and contracts involving life contingencies. This section does not prohibit a company or association from holding a portion of its legal reserve in cash.

The investment programs developed by companies shall take into account the safety of the company's principal, investment yield and return, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs and investment diversification.

1. United States government obligations.

a. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America.

b. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America include investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to the United States government obligations described in paragraph "a", and which are included in the national association of insurance commissioners' securities valuation office's United States direct obligationsfull faith and credit exempt list.

2. State, District of Columbia, territorial and municipal obligations. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the District of Columbia, or by any state, insular or territorial possession of the United States of America, or by any county, city, town, school, road, drainage, or other district located within any state, or insular or territorial possession of the United States of America, or by any civil subdivision or governmental authority of any such state, or insular or territorial possession, or by any instrumentality of any such state, or insular or territorial possession, civil subdivision, or governmental authority; provided that the obligations are valid, legally authorized and issued.

3. Canadian government, provincial and municipal obligations. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or by any province thereof, or by any municipality or district therein, provided that the obligations are valid, legally authorized and issued.

4. International Bank bonds. Bonds or other evidence of indebtedness issued, assumed or guaranteed by the International Bank for reconstruction and development, in an amount not to exceed two percent of its total assets as shown by the last annual report, or by the Inter-American Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report, by the Asian Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report or by the African Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report. However, the combined investment in bonds or evidences of indebtedness permitted by this subsection shall not exceed four percent of its total assets as shown by the last annual report.

5. Corporate obligations. Subject to the restrictions contained in subsection 8 hereof, bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. If fixed interest-bearing obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times

such average annual fixed charges of the issuing, assuming or guaranteeing corporation applicable to such period, and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant.

However, with respect to fixed interest-bearing obligations which are issued, assumed or guaranteed by a financial company, the net earnings by the financial company available for its fixed charges for the period of five fiscal years preceding the date of acquisition of the obligations by the insurance company shall have averaged per year not less than one and one-fourth times such average annual fixed charges of the issuing, assuming or guaranteeing financial company applicable to such period, and, during at least one of the last two years of the period, its net earnings shall have been not less than one and one-fourth times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and speculative elements are not predominant in their investment qualities and characteristics. As used in this paragraph, "*financial company*" means a corporation which on the average over its last five fiscal years preceding the date of acquisition of its obligations by the insurer, has had at least fifty percent of its net income, including income derived from subsidiaries, derived from the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, or from banking or factoring, or from similar or related lines of business.

b. If adjustment, income or other contingent interest obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming or guaranteeing corporation and its average annual maximum contingent interest applicable to such period and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year, or if, at the date of acquisition, the obligations are adequately secure and have investment qualities and characteristics and speculative elements are not predominant.

The term "*net earnings available for fixed charges*" as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes other than any income taxes, depreciation and depletion, but nonrecurring items of income or expense may be excluded.

The term "*fixed charges*" as used herein shall include interest on unfunded debt and funded debt on a parity with or having a priority to the obligation under consideration.

The term "*corporation*" as used in this chapter includes a joint stock association, a limited liability company, a partnership, or a trust.

The securities, real estate, and mortgages described in this section include participations, which means instruments evidencing partial or undivided collective interests in such securities, real estate, and mortgages.

6. *Preferred and guaranteed stocks.* Subject to the restrictions contained in subsection 8 hereof, preferred stocks of, or stocks guaranteed by, a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. Preferred stocks.

(1) All of the obligations and preferred stocks of the issuing corporation, if any, prior to the preferred stock acquired must be eligible as investments under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges and preferred dividends of the issuing corporation shall have

been, for each of the five fiscal years immediately preceding the date of acquisition, not less than one and one-half times the sum of the annual fixed charges and contingent interest, if any, and the annual preferred dividend requirements as of the date of acquisition.

The term "*preferred dividend requirements*" shall mean cumulative or noncumulative dividends whether paid or not.

The term "*fixed charges*" shall be construed in accordance with subsection 5 above. The term "*net earnings available for fixed charges and preferred dividends*" as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes, including any income taxes, depreciation and depletion, but nonrecurring items may be excluded.

b. Guaranteed stocks.

(1) All of the fixed interest-bearing obligations of the guaranteeing corporation, if any, must be eligible under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges of the guaranteeing corporation shall meet the requirements outlined in paragraph "*a*" of subsection 5 above, except that all guaranteed dividends shall be included in "*fixed charges*".

Any investments in preferred stocks or guaranteed stocks made under the provisions of this subsection shall be considered as moneys and credits for purposes of taxation and their assessment shall be subject to deductions for indebtedness as provided by law in the case of assessment of moneys and credits in general. This provision shall be effective as to assessments made during the year 1947 and thereafter.

7. Equipment trust obligations. Subject to the restrictions contained in subsection 8, bonds, certificates, or other evidences of indebtedness secured by any transportation equipment used wholly or in part in the United States of America or Canada, that provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within twenty years from date of issue, and also provide:

a. For vesting of title to such equipment free from encumbrance in a corporate trustee, or

b. For creation of a first lien on such equipment.

8. Further restrictions. Securities included under subsections 5, 6, and 7 shall not be eligible:

a. If the corporation is in default on fixed obligations as of the date of acquisition. Securities provided in paragraph "*a*" of subsection 6 shall not be eligible if the issuing corporation is in arrears with respect to the payment of any preferred dividends as of the date of acquisition.

b. The investments of any company or association in such securities shall not be eligible in excess of the following percentages of the legal reserve of such company or association:

(1) With the exception of public securities, two percent of the legal reserve in the securities of any one corporation. Five percent of the legal reserve in the securities of any one public utility corporation.

(2) Seventy-five percent of the legal reserve in the securities described in subsection 5 issued by other than public utility corporations. Fifty percent of the legal reserve in the securities described in subsection 5 issued by public utility corporations.

(3) Ten percent of the legal reserve in the securities described in subsection 6.

(4) Ten percent of the legal reserve in the securities described in subsection 7.

c. Statements adjusted to show the actual condition at the time of acquisition or the effect of new financing, known commercially as pro forma statements, may be used in determining whether investments under subsections 5 and 6 are in compliance with requirements. Statements so adjusted or consolidated statements may be used in order to include the earnings of all predecessor, merged, consolidated, or purchased companies.

9. *Real estate bonds and mortgages.*

a. Bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first or second lien upon otherwise unencumbered real property and appurtenances thereto within the United States of America, or any insular or territorial possession of the United States, or the Dominion of Canada, and upon leasehold estates in real property where fifty years or more of the term including renewals is unexpired, provided that at the date of acquisition the total indebtedness secured by the first or second lien shall not exceed ninety percent of the value of the property upon which it is a lien. However, a company or organization shall not acquire an indebtedness secured by a first or second lien upon a single parcel of real property, or upon a leasehold interest in a single parcel of real property, in excess of two percent of its legal reserve. These limitations do not apply to obligations described in paragraphs "b", "c", "d", "e", and "f" of this subsection.

Improvements and appurtenances to real property shall not be considered in estimating the value of the property unless the owner contracts to keep the property adequately insured during the life of the loan in some reliable fire insurance companies, or associations, the insurance to be made payable in case of loss to the mortgagee, trustee, or assignee as its interest appears at the time of the loss.

For the purpose of this subsection a mortgage or deed of trust is not other than a first or second lien upon property by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when the real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

b. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of Congress of the United States of America approved June 27, 1934, entitled the "*National Housing Act*"*, as heretofore and hereafter amended.

c. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with the terms and provisions of Title III of an Act of Congress of the United States of America approved June 22, 1944, known as Public Law 346 Seventy-eighth Congress, Chapter 268 2nd Session, cited as the "*Servicemen's Readjustment Act of 1944*"**, as heretofore and hereafter amended.

d. Contracts of sale, purchase money mortgages or deeds of trust secured by property obtained through foreclosure, or in settlement or satisfaction of any indebtedness, or in the acquisition or disposition of real property acquired pursuant to subsection 14.

e. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with Title I of the Bankhead-Jones Farm Tenant Act, an Act of the Congress of the United States, cited as the "*Farmers Home Administration Act of 1946*"***, as heretofore or hereafter amended.

f. Bonds, notes, obligations or other evidences of indebtedness secured by mortgages or deeds of trust which

are a first lien upon unencumbered personal or real property or both personal and real property, including a leasehold of real estate, within the United States of America, or any insular or territorial possession of the United States of America, or the Dominion of Canada, under lease, purchase contract, or lease purchase contract to any governmental body or instrumentality whose obligations qualify under subsection 1, 2 or 3 of this section, or to a corporation whose obligations qualify under paragraph "a" of subsection 5 of this section, if the terms of the bond, note or other evidence of indebtedness provide for the amortization during the initial, fixed period of the lease or contract of one hundred percent of the indebtedness and there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, ground rents and taxes other than the income taxes of the borrower; provided, however, that where the security consists of a first mortgage or deed of trust lien on a fee interest in real property only, the bond, note or other evidence of indebtedness may provide for the amortization during the initial, fixed period of the lease or contract of less than one hundred percent of the indebtedness if there is to be left unamortized at the end of such period an amount not greater than the appraised value of the land only, exclusive of all improvements, and if there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower. Investments made in accordance with the provisions of this paragraph shall not be eligible in excess of twenty-five percent of the legal reserve, nor shall any one such investment in excess of five percent of the legal reserve be eligible.

g. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of the federal Parliament of the Dominion of Canada approved March 18, 1954, cited as the "*National Housing Act, 1954*", as heretofore and hereafter amended.

10. *Real estate.*

a. Real estate in this state which is necessary for the accommodation of the company or association as a home office or in the transaction of its business. In the erection of buildings for such purposes, there may be added rooms for rent. Before the company or association invests any of its funds in accordance with this paragraph it shall first obtain the consent of the commissioner. The maximum amount which a company or association shall be permitted to invest in accordance with these provisions shall not exceed ten percent of the legal reserve. However, a stock company may invest such portion of its paid-up capital, in addition to ten percent of the legal reserve, as is not held to constitute a part of its legal reserve, under section 508.36, and the total legal reserve of the company shall be equal to or exceed the amount of its paid-up capital stock.

b. Any real estate acquired through foreclosure, or in settlement or satisfaction of any indebtedness. Any company or association may improve real estate so acquired or remodel existing improvements and exchange such real estate for other real estate or securities, and real estate acquired by such exchange may be improved or the improvements remodeled.

11. *Certificates of sale.* Certificates of sale obtained through foreclosure of liens on real estate.

12. *Policy loans.* Loans upon the security of the policies of the company or association and constituting a lien thereon in an amount not exceeding the legal reserve thereon.

13. *Collateral loans.* Loans secured by collateral consisting of any securities qualified in this section, provided the amount of the loan is not in excess of ninety percent of the value of the securities.

Provided further that subsection 8 of this section shall apply to the collateral securities pledged to the payment of loans authorized in this subsection.

14. *Urban real estate and personal property.* Personal or real property or both located within the United States or the Dominion of Canada, other than real property used or to be used primarily for agricultural, horticultural, ranching or mining purposes, which produces income or which by suitable improvement will produce income. However, personal property acquired under this subsection shall be acquired for the purpose of entering into a contract for the sale or for a use under which the contractual payments may reasonably be expected to result in the recovery of the investment and an investment return within the anticipated useful life of the property. Legal title to the real property may be acquired subject to a contract of sale. "*Real property*" as used in this subsection includes a leasehold of real estate, an undivided interest in a leasehold of real estate, and an undivided interest in the fee title of real estate. Investments under this subsection are not eligible in excess of ten percent of the legal reserve.

15. *Railroad obligations.* Bonds or other evidences of indebtedness which carry a fixed rate of interest and are issued, assumed or guaranteed by any railroad company incorporated under the laws of the United States of America, or of any state, district, insular or territorial possessions thereof, not in reorganization or receivership at the time of such investment, provided that the railroad company:

a. Shall have had for the three-year period immediately preceding investment, for which the necessary data for the railroad company shall have been published, a balance of income available for fixed charges which shall have averaged per year not less than one and one-quarter times the fixed charges for the latest year of the period; and

b. Shall have had for the three-year period immediately preceding investment, for which the necessary data for both the railroad company and all class I railroads shall have been published:

(1) A balance of income available for the payment of fixed charges at least as many times greater than the fixed charges for the latest year of the period as the balance of income available for the payment of fixed charges of all class I railroads for the same three-year period is times greater than the amount of all fixed charges for such class I railroads for the latest year of the period; and

(2) An amount of railway operating revenues remaining after deduction of three times the fixed charges for the latest year of the period from the balance of income available for the payment of fixed charges for the three-year period, which amount is as great a proportion of its railway operating revenues for the same three-year period as is the proportion of railway operating revenues remaining for all class I railroads, determined in the same manner and for the same period as for the railroad.

The terms "*class I railroads*", "*balance of income available for the payment of fixed charges*", "*fixed charges*" and "*railway operating revenues*" when used in this subsection, are to be given the same meaning as in the accounting reports filed by a railroad company in accordance with the regulations for common carriers by rail of the Interstate Commerce Act; 24 Stat. L. 379; 49 U.S.C. § 1 to 40 inc., 1001 to 1100 inc., provided that the "*balance of income available for the payment of fixed charges*" and "*railway operating revenues remaining*", as the terms are used in this subsection, shall be computed before deduction of federal income or excess profits taxes; and that in computing "*fixed charges*" there shall be excluded interest and amortization charges applicable to debt called for redemption or which will otherwise mature within six months from the time of investment and for the payment of which funds have been or currently are being specifically set aside.

The eligibility of railroad obligations described in the first sentence of this subsection shall be determined exclusively as provided herein, without regard to the provisions for qualification contained in subsections 5 and 8 of this section. Provisions for qualification contained in this section shall not be construed as applying to equipment trust obligations, guaranteed stocks, or contingent interest bonds of railroad companies. Investments made in accordance with the provisions of this subsection shall not be eligible in excess of ten percent of the legal reserve.

16. *Deposit of securities.* Securities in an amount not less than the legal reserve as defined in this section shall be deposited and the deposit maintained with the commissioner of insurance or at such places as the commissioner may designate as will properly safeguard them. There may be included in the deposit an amount of cash on hand not in excess of five percent of the deposit required, that deposit to be evidenced by a certified check, certificate of deposit, or other evidence satisfactory to the commissioner of insurance. Deposits of securities may be made in excess of the amounts required by this section. A stock company organized under the laws of this state shall not be required to make a deposit until the legal reserve, as ascertained by the commissioner, exceeds the amount deposited by it as capital. Real estate may be made a part of the deposit by furnishing evidence of ownership satisfactory to the commissioner and by conveying the real estate to the commissioner or the commissioner's successors in office by warranty deed. The commissioner and the successors in office shall hold the real estate in trust for the benefit of the policyholders of the company or members of the association. Real estate mortgage loans and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement is subject to check at the discretion of the commissioner.

The securities comprising the deposit of a company or association against which proceedings are pending under section 508.18 shall vest in the state for the benefit of all policyholders of the company or association.

Securities or title to real estate on deposit may be withdrawn at any time and other eligible securities may be substituted, provided the amount maintained on deposit is equal to the sum of the legal reserve and twenty-five thousand dollars. In the case of real estate the commissioner shall execute and deliver to the company or association a quitclaim deed to the real estate. Any company or association shall, if requested by the commissioner, at the time of withdrawing any securities on deposit, designate for what purpose the same are being withdrawn.

Companies or associations having securities or title to real estate on deposit with the commissioner of insurance shall have the right to collect all dividends, interest, rent, or other income from the deposit unless proceedings against the company or association are pending under section 508.18, in which event the commissioner shall collect such interest, dividends, rent, or other income and add the same to the deposit.

Any company or association receiving payments or partial payments of principal on any securities deposited with the commissioner of insurance shall notify the commissioner of such fact at such times and in such manner as the commissioner may prescribe, giving the amount and date of payment.

The commissioner of insurance may receive on deposit securities or title to real estate of alien companies authorized to do business in the state of Iowa, for the purpose of securing its policyholders in the state of Iowa and the United States. The provisions hereof not inconsistent with the deposit agreement shall apply to the deposits of such alien companies.

17. *Rules of valuation.*

a. All bonds or other evidences of debt having a fixed term and rate of interest, if amply secured and not in default as to principal or interest, may be valued as follows:

(1) If purchased at par, at the par value.

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

In applying the above rule, the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

b. Certificates of sale obtained by foreclosure of liens on real estate shall be valued in an amount not greater

than the unpaid principal of the defaulted indebtedness plus any amounts actually expended for taxes and acquisition costs.

c. All investments, except those for which a specific rule is provided in this subsection, shall be valued at their market value, or at their appraised value, or at prices determined by the commissioner of insurance as representing their fair market value, or at a value as determined under rules adopted by the national association of insurance commissioners.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rules, but no company or association shall be prevented from valuing any asset at an amount less than that provided by this subsection.

18. *Common stocks or shares.*

a. Common stocks or shares issued by solvent corporations or institutions are eligible if the total investment in stocks or shares in the corporations or institutions does not exceed ten percent of legal reserve, provided not more than one-half percent of the legal reserve is invested in stocks or shares of any one corporation. However, the stocks or shares shall be listed or admitted to trading on an established foreign securities exchange or a securities exchange in the United States or shall be publicly held and traded in the "*over-the-counter market*" and market quotations shall be readily available, and further, the investment shall not create a conflict of interest for an officer or director of the company between the insurance company and the corporation whose stocks or shares are purchased.

b. Common stocks or shares in a subsidiary corporation, the acquisition or purchase of which is authorized by section 508.33 are eligible if the total investment in these stocks or shares does not exceed five percent of the legal reserve. These stocks or shares are eligible even if the stocks or shares are not listed or admitted to trading on a securities exchange in the United States and are not publicly held and have not been traded in the "*over-the-counter market*". The stocks or shares shall be valued at their book value.

19. *Other foreign government or corporate obligations.* Bonds or other evidences of indebtedness, not to include currency, issued, assumed, or guaranteed by a foreign government other than Canada, or by a corporation incorporated under the laws of a foreign government other than Canada. Such governmental obligations must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Such corporate obligations must meet the qualifications established in subsection 5 for bonds and other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or Canada. Foreign investments authorized by this subsection are not eligible in excess of twenty percent of the legal reserve of the life insurance company or association. Investments in obligations of a foreign government, other than Canada and the United Kingdom, are not eligible in excess of two percent of the legal reserve in the securities of foreign governments of any one foreign nation. Investments in obligations of the United Kingdom are not eligible in excess of four percent of the legal reserve. Investments in a corporation incorporated under the laws of a foreign government other than Canada are not eligible in excess of two percent of the legal reserve in the securities of any one foreign corporation.

Eligible investments in foreign obligations under this subsection are limited to the types of obligations specifically referred to in this subsection. This subsection in no way limits or restricts investments in Canadian obligations and securities specifically authorized in other subsections of this section.

This subsection shall not authorize investment in evidences of indebtedness issued, assumed, or guaranteed by a foreign government which engages in a consistent pattern of gross violations of human rights.

20. *Venture capital funds.* Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the funds in small businesses having their principal offices within this state

and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its legal reserve under this subsection. For purposes of this subsection, *"venture capital fund"* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. *"Equity interests"* means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

"Venture capital fund" includes an equity interest in the Iowa fund of funds as defined in section 15E.62.

21. *Use of custodian banks, clearing corporations, and the federal reserve book-entry system.*

a. As used in this subsection:

(1) *"Clearing corporation"* means a corporation as defined in section 554.8102.

(2) *"Custodian bank"* means a federal or state bank or trust company regulated under the Iowa banking laws or the federal reserve system, which maintains an account in its name in a clearing corporation and acts as custodian of securities owned by a domestic insurer.

(3) *"Federal reserve book-entry system"* means the computerized system sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and its agencies and instrumentalities, in the federal reserve banks through national banks, state banks, or trust companies, which either are members of the federal reserve system or otherwise have access to the computerized systems.

b. Securities deposited by a domestic insurance company with a custodian bank, or redeposited by a custodian bank with a clearing corporation, or held in the federal reserve book-entry system may be used to meet the deposit requirements of subsection 16. The commissioner shall adopt rules necessary to implement this section which:

(1) Establish guidelines on which the commissioner determines whether a custodian bank qualifies as a bank in which securities owned by an insurer may be deposited for the purpose of satisfying the requirements of subsection 16.

(2) Designate those clearing corporations in which securities owned by insurers may be deposited.

(3) Set forth provisions that custodian agreements executed between custodian banks and insurers shall contain. These shall include provisions stating that minimum deposit levels shall be maintained and that the parties agree securities in deposits with custodian banks shall vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

(4) Establish other safeguards applicable to the use of custodian banks and clearing corporations by insurers which the commissioner believes necessary to protect the policyholders of the insurers.

c. A security owned by a domestic insurer and deposited in a custodian bank or clearing corporation does not qualify for purposes of its legal reserve deposit unless the custodian bank and clearing corporation are approved by the commissioner for that purpose.

22. *Financial instruments used in hedging transactions.*

a. As used in this subsection, unless the context otherwise requires:

(1) "*Financial instrument*" means an agreement, option, instrument, or any series or combination agreement, option, or instrument that provides for either of the following:

(a) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu of such delivery or relinquishment.

(b) Which has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

(2) "*Financial instrument transaction*" means a transaction involving the use of one or more financial instruments.

(3) "*Hedging transaction*" means a financial instrument transaction which is entered into and maintained to reduce either of the following:

(a) The risk of a change in the value, yield, price, cash flow, or quality of assets or liabilities which the domestic insurer has acquired and maintains as qualified assets in its legal reserve deposit or which liabilities the domestic insurer has incurred and form the basis for calculation of its legal reserve.

(b) The currency exchange-rate risk or the degree of exposure as to assets or liabilities which the domestic insurer has acquired or incurred.

b. Financial instruments used in hedging transactions must meet the qualifications established in subsection 5 for bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or Canada, or the qualifications established in subsection 19 for bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of a foreign government other than Canada.

c. Investments in financial instruments used in hedging transactions are not eligible in excess of two percent of the legal reserve in the financial instruments of any one corporation, less any securities of that corporation owned by the company or association and in which its legal reserve is invested, except insofar as the financial instruments are collateralized by cash or United States government obligations as authorized by subsection 1 deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

d. Investments in financial instruments used in hedging transactions are not eligible in excess of ten percent of the legal reserve, except insofar as the financial instruments are collateralized by cash or United States government obligations as authorized by subsection 1 deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

e. Investments in financial instruments of foreign governments or foreign corporate obligations, other than Canada, used in hedging transactions are not eligible in excess of twenty percent of the legal reserve, less any foreign investment authorized by subsection 19 owned by the company or association and in which its legal reserve is invested, except insofar as the financial instruments are collateralized by cash or United States

government obligations as authorized by subsection 1 deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

f. Prior to engaging in hedging transactions under this subsection, a domestic insurer shall develop and adequately document policies and procedures regarding hedging transaction strategies and objectives. Such policies and procedures shall address authorized hedging transactions, limitations, internal controls, documentation, and authorization and approval procedures. Such policies and procedures shall also provide for review of hedging transactions by the domestic insurer's board of directors or the board of directors' designee.

g. A domestic insurer shall be able to demonstrate to the commissioner the intended hedging characteristics of hedging transactions under this subsection and the ongoing effectiveness of each hedging transaction or combination of hedging transactions.

h. Financial instruments used in hedging transactions shall only be eligible in accordance with this subsection after the commissioner has adopted rules pursuant to chapter 17A regulating hedging transactions under this subsection.

23. Security loans.

a. A life insurance company or association may loan securities held by it in its legal reserve to a broker-dealer registered under the Securities Exchange Act of 1934, a national bank, or a state bank, foreign bank, or trust company that is a member of the United States federal reserve system, and the loaned securities shall continue to be eligible for inclusion in the legal reserve of the life insurance company or association.

b. The loan shall be fully collateralized by cash, cash equivalents, or obligations issued or guaranteed by the United States or an agency or instrumentality of the United States. The life insurance company or association shall take delivery of the collateral either directly or through an authorized custodian.

c. If the loan is collateralized by cash or cash equivalents, the cash or cash equivalent collateral may be reinvested by the life insurance company or association in either individual securities which are eligible for inclusion in the legal reserve of the life insurance company or association or in repurchase agreements fully collateralized by such securities if the life insurance company or association takes delivery of the collateral either directly or through an authorized custodian or pooled fund comprised of individual securities which are eligible for inclusion in the legal reserve of the life insurance company or association. If such reinvestment is made in individual securities or in repurchase agreements, the individual securities or the securities which collateralize the repurchase agreements shall mature in less than two hundred seventy days. If such reinvestment is made in a pooled fund, the average maturity of the securities comprising such pooled fund must be less than two hundred seventy days. Individual securities and securities comprising the pooled fund shall be investment grade.

d. The loan shall be evidenced by a written agreement which provides all of the following:

(1) That the loan will be fully collateralized at all times during the term of the loan, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(2) If the loan is fully collateralized by cash or cash equivalents, the cash or cash equivalent may be reinvested by the life insurance company or association as provided in paragraph "*c*".

(3) That the loan may be terminated by the life insurance company or association at any time, and that the borrower shall return the loaned stocks or obligations or equivalent stocks or obligations within five business days after termination.

(4) That the life insurance company or association has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the life insurance company or association due to default that are not covered by the collateral.

e. Securities loaned pursuant to this subsection are not eligible for inclusion in the legal reserve of the life insurance company or association in excess of twenty percent of the legal reserve.

[C73, § 11791181; C97, § 17911793, 1803, 1804, 1806, 1807; SS15, § 1806; C24, 27, 31, 35, 39, § **86988701, 87358739, 8741, 8742, 8744, 8747**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 511.8; 81 Acts, ch 168, § 1; 82 Acts, ch 1095, § 25]

84 Acts, ch 1067, § 40; 85 Acts, ch 136, § 1; 85 Acts, ch 228, § 4; 85 Acts, ch 252, § 31; 87 Acts, ch 64, § 14; 88 Acts, ch 1112, § 205; 89 Acts, ch 83, § 69; 89 Acts, ch 311, § 29; 91 Acts, ch 26, §38, 59, 60; 96 Acts, ch 1013, § 1; 96 Acts, ch 1138, § 1, 84; 98 Acts, ch 1014, § 1; 2000 Acts, ch 1023, §1518, 60; 2002 Acts, ch 1119, §179; 2003 Acts, ch 91, §20; 2004 Acts, ch 1110, § 2831

Footnotes

Similar provisions, § 515.35

*48 Stat. L. 1246; 12 U.S.C. §1701 et seq.

**58 Stat. L. 291; recodified, 72 Stat. L. 1105, 1273; now covered by 38 U.S.C. § 3701 et seq.

***60 Stat. L. 1062; repealed by Pub. L. No. 87-128, §341(a); see 7 U.S.C. §1921 et seq.